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United States Circuit Court of Appeals,

FOR THE 9TH CIRCUIT,

*Oct.*  
~~JANUARY TERM, 1891.~~

No. *15*

GEE FOOK SING, APPELLANT,

*vs.*

UNITED STATES, INTERVENOR AND APPELLEE.

TRANSCRIPT ON APPEAL.

*Filed, Nov. 24, 1891.*

.....  
*Clerk.*

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IN THE

# District Court of the United States.

Northern District of California

IN THE MATTER OF  
GEE FOOK SING,  
ON HABEAS CORPUS.

*To the Hon. Ogden Hoffman, Judge of the District Court of the United States, Northern District of California :*

The petition of Jee Joong Ding respectfully shows :

That Gee Fook Sing is unlawfully imprisoned, detained, confined and restrained of his liberty by Captain Walker, Master of the Steamship *Belgic*, in the City and County of San Francisco, State of California, Northern District of California.

That the said imprisonment, detention, confinement and restraint are illegal, and the illegality thereof consists in this, to wit :

That it is claimed by said Master that said passenger is a subject of the Emperor of China, and must not and cannot be allowed to land under the provisions of the Act of Congress of May 6th, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese." and the acts amendatory thereof and supplemental thereto.

That said passenger does not come within the restrictions of said Acts, but, on the contrary, your petitioner alleges that said passenger was a resident of the United States, and departed therefrom on the steamship *Peking* on the 24th day of November, 1879. Quong Sui, 5 years, 10 months, 13 days.

That the said passenger is a citizen of the United States ; that he was born in the City and County of San Francisco, at 741 Commercial Street, in the year 1876. That his father's name is Gee Kee Dar, and his mother's name is Fong Shee.

4 That he has applied to the Collector of the port of San Francisco to be permitted to land, but said application was denied.

That your petitioner is the friend of said passenger, and makes this petition on his behalf.

Wherefore, your petitioner prays that a writ of habeas corpus may be granted, direct to the said Master, commanding him to have the body of said passenger before your Honor, at a time and place therein to be specified, to do and receive what shall then and there be considered by your Honor concerning him, together with the time and cause of his detention, and said writ; and that he may be restored to his liberty.

Dated on the 16th day of October, 1890.

JEE [Chinese signature] JOONG DING, Petitioner.

5 State of California,  
City and County of San Francisco, }  
Northern District of California, } ss.  
United States of America. }

JEE JOONG DING, being duly sworn, says that he is the Petitioner above named, and that he has heard read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge; that he is a merchant residing and doing business in the firm of Sing Harg, No. 3 Spofford Street.

JEE [Chinese signature] JOONG DING.

Sworn to before me this 16th day of October, 1890.

JOHN FOUGA,

Commissioner of the Circuit Court of the United States,

for the Northern District of California.

6

Let the writ of habeas corpus issue, pursuant to the prayer of the petition, returnable on or before October 20th, 1890; or, in case the steamer on which said petitioner is detained has not cleared on that day, as soon as practicable after clearance, but before the departure of the steamer. And when the within named petitioner is produced, let him be admitted to bail in the sum of \$1,500. And ordered that the case be referred to Ward McAllister, to take proofs and report findings and judgment, as prescribed in general order of this Court in like cases.

OGDEN HOFFMANN, Judge.

[ENDORSED:] Filed, Oct. 16th, 1890.

SOUTHARD HOFFMANN, Clerk.

By J. S. MANLEY, Deputy Clerk.

In the United States District Court, in and for the Northern  
District of California:

The HON. S. C. HOUGHTON, Commissioner.

In the Matter of the *Habeas Corpus* of GEE FOOK SING. No. 10,692.

Friday, October 9, 1891.

*Appearances.*

H. B. M. MILLER, Esq., appeared for the Petitioner.

W. G. WITTER, Esq., appeared for the United States.

GEE FOOK SING, the Petitioner: Sworn.

THE COMMISSIONER. What is your name?

A. Gee Fook Sing.

Q. Where were you born? A. In this city.

Q. When? A. I was born in Kwong Sue, 3d year (1877), but I do not know what month.

Q. When did you depart from this port for China, and by what steamer. A. I departed from here in Kwong Sue 5th, 10th month, 15th day, (November 15, 1879), on the steamer "City of Peking."

Q. When did you return to the United States, and by what steamer? A. I arrived here last year, 9th month, on the steamer "Belgic"; I don't know exactly the day, I think it was the 7th or 8th day, (October 20 or 21, 1890.)

Q. How do you know you left here at the time you have stated?

A. My father and mother told me so.

Q. Is that the only way you know? A. Yes, sir.

Q. How do you know you were born in this country?

A. My father and mother told me so.

Q. Do you know it in any other way. A. That is the only way.

Q. Do you remember of having been in this country at all?

A. I don't.

Q. What relatives, if any, have you in this country?

A. I have a distant cousin, and a paternal uncle here.

Q. Any other relatives here. A. That is all I know of.

Q. Where are your father and mother? A. In China.

Q. Are they both living? A. Yes, sir.

10 THE COMMISSIONER. It is apparent that this witness can know nothing as to the main fact which must be here established, in order to entitle him to land here, to wit : whether he was born in this country. I think it is unnecessary to examine him further.

MR. MILLER. Is there any means or any way you would remember having been here, if your father and mother had not told you ?

A. There is no way that I would have known it, excepting what they told me.

Q. How old were you when you left here ?

A. Three years old.

MR. MILLER. That is all.

GEE GOON HING, Called for the Petitioner : Sworn.

THE COMMISSIONER. Q. What is your name ?

11 A. Gee Goon Hing.

Q. What is your business ? A. I used to be in the merchandise business, but business was very dull, and of late I have been in the laundry business.

Q. Where is your laundry business located ?

A. On 15th street, Oakland.

Q. What number ? A. 610.

Q. How long have you been in the laundry business there ?

A. A few months.

Q. How many months ? A. About five months.

Q. What business were you in before that ?

A. I used to be in the firm of Quong Sing Loong, on 8th street, in Oakland, before that.

12 Q. Do you own this laundry business ? A. Yes, sir.

Q. When did you first come to this country ?

A. I first came here in Kwong Sue, first year.

Q. Have you been here all the time since then ?

A. I have been here all the time, excepting the time I went to China.

Q. When did you go to China ? A. I went to China the year before last, and returned this year.

Q. Did you see this boy when you were in China, this petitioner ? A. I did.

Q. Did you make arrangements then to have him brought back here ? A. No, sir, I did not make any arrangements for him to come here. His father and mother sent him to come here, to go to school.

Q. When did he come here ? A. He came here some time after I returned.

Q. Was anything said while you were in China by this petitioner's father and mother, with reference to the petitioner's coming back here? A. Yes, sir, they spoke to me about it, and told me that the boy was born in this country, and they intended to send him over here.

Q. Did you know anything before that about the boy being born in this country?

A. Well, they told me he was born here, and I knew it myself at the time he was born here.

Q. When was he born here? A. He was born in Kwong Sue, third year.

Q. What month and day, if you can tell?

A. The tenth month.

Q. What day? A. I do not remember what day.

Q. How can you remember the month? A. His father is my eldest brother, and I ought to remember it.

Q. Is that the only way you remember it?

A. Well, when I was in China I was talking with the mother of this boy, and asked her how old the boy was, and the parents of the boy said, and told me; but since then I have forgotten what month he was born in, but they told me.

Q. Can you tell what time he left here for China?

A. I can. He went home Kwong Sue, 5th year, 10th month; that is the time he went home. I do not remember the month he was born. I made a mistake about that.

Q. Was he born in the first part of the year, or the latter part of the year? A. I think it was in the first part of the year; I am not positive about that, I think it was.

Q. When you were in China and saw this boy, did you immediately recognize him from recollection as the boy you had seen here? A. No. How could I recognize him, not having seen him for so long a time? They told me, "That is him,—the boy that was born over our place."

Q. Is that the only way you know that was the boy that was born over the store, from the fact they told you so?

A. That is the only way.

Q. What has the boy been doing since he came back here?

A. He is going to the English school in Oakland.

Q. What does his father do in China?

A. He is in the general merchandise business in China.

Q. Whereabouts in China? A. He is in the Sun Ning District, at the place called Yee Ho.

Q. Is he a man of property, a man of means?

16 A. Well, he is not a man that I should call wealthy, but he is a man that has some means.

Q. How much is he worth? A. I do not know that.

Q. Well, about how much is he worth? If you are his brother you ought to know? A. A couple of thousand dollars, I guess.

Q. Is the father paying the expenses of this boy's education during his sojourn in this country? A. Yes, sir.

Q. How much does it cost him a month to keep this boy here and send him to school? A. It does not cost him much, if anything. He stops at Quong Sing Loong's store; that is his home; there is no charge excepting buying pencils and pens and books, and such things, school books.

Q. Has he any relative in this country excepting you?

17 A. Well, he has no near relatives here: he has some of the same family, though.

Q. How many generations removed is his nearest relative excepting yourself? A. Four or five generations, I should say.

Q. Are you interested in any business now, excepting that laundry business? A. I am still interested in the firm of Quong Sing Loong, but the business was so dull I thought I would go into something else.

Q. How much interest have you there?

A. I have an interest of \$500 there.

Q. Is that firm making any money now over expenses?

A. Well, they are not making much now, but just wages, you might say.

Q. Has this boy's father any business interest in this country?

18 A. No, he has none.

Q. Is this boy doing anything except going to school; is he engaged in doing work of any kind?

A. He is not doing anything except going to school; of course he helps around the store a little in getting the meals, and couldn't do anything else if he learns English, and has to have some business to go in.

Q. Tell me how it is, if his father has no interest in the store, and you have but a \$600 interest, and the store is not paying more than expenses and wages, that this boy is kept there without any charge for board and lodging there?

MR. MILLER. We object to that, as irrelevant, incompetent and immaterial, and as a question having no bearing on this case.

THE COMMISSIONER. The objection is overruled.

MR. MILLER. To which we take an exception.

A. He is my nephew.

THE COMMISSIONER. Q. How is it, it costs him nothing?

MR. MILLER. The same objection, on the ground that it is incompetent, irrelevant and immaterial, and calling for the opinion of the witness.

THE COMMISSIONER. The objection is overruled.

MR. MILLER. We except.

A. He works around the place, and he helps a little, and he helps to do the cooking, and one thing and another.

THE COMMISSIONER. That is all.

MR. MILLER. Q. When you were back to China, with whom was this boy living when you saw him there?

A. He was living with his father and mother.

Q. And his father is a brother of yours, you say?

A. Yes, sir.

Q. Do you know whether or not he had any children when he left this country? A. Yes, sir.

Q. Was it a boy or a girl? A. A male.

Q. Were you told that the child you saw back there was the one you see here? A. Yes, sir.

GEE AH HOW, called for the Petitioner: Sworn.

THE COMMISSIONER. Q. What is your name?

A. Gee Ah How.

Q. What is your business? A. I keep a laundry.

Q. Whereabouts? A. I keep a laundry at 361 9th street, Oakland.

Q. How long have you been in this country?

A. 17 or 18 years.

Q. Do you know this boy, the petitioner in this case?

A. Yes, sir.

Q. How long have you known him?

A. A long time.

Q. How many years? A. I know him since Kwong Sue, 3rd year, when he was born here.

Q. When in the third year of Kwong Sue was he born here?

A. In the early part of the year.

Q. When did he leave here for China?

A. He went to China in Kwong Sue, 5th year, the latter part of the year.

Q. Have you ever been in China since that time?

A. I have been home once.

22 Q. When were you to China? A. I was home to China in Kwong Sue, 8th year.

Q. Do you know where this boy's people live in China?

A. Yes, sir.

Q. Where? A. They live in the Sun Ning District, Kee Yuen Ting village.

Q. What does his father do?

A. He keeps a merchandise store in China.

Q. Has he any other children excepting this one?

A. I have heard he has two sons.

Q. Did you visit the father's place when you were in China? A Yes, sir.

Q. Did you see any children there?

A. After they came back here, he had a brother born.

23 Q. Did you see any children there, at all, at the father's place?

A. I only saw one.

Q. What one was that? A. This one here, Gee Fook Sing.

Q. Have you seen him since that time, until he came here now?

A. I did not see him any time from the ninth year. I went home in the 8th year, and I came back in the 9th, and I saw him last year.

Q. How can you be sure this is the same boy?

A. I used to visit his father's store, and carried the boy around.

Q. When was that? A. About Kwong Sue, 4th year.

Q. Is that the way you remember him?

A. Also in the 5th year, too; and when they were going to China, I sent a letter to my mother by the father of this boy.

Q. Is that the way you identify this boy?

24 A. I can recognize him.

Q. Is that the way you recognize him? from having seen him in the 4th and 5th years of Kwong Sue?

A. Yes, sir.

Q. Is that the only way? A. Well, besides I have been home in China, and saw him there.

Q. You saw him there? A. Yes sir, I saw him there.

Q. Have you any other business except this business at 361 9th street, Oakland?

A. That is all the business I have.

Q. Have you any partner who knows this boy at all, who ever saw this boy before he came to this country?

A. I don't know that there is anybody in my place that knows him, or not. I am busy all the day.

Q. Are you connected in business in any way with this other

witness, Yee Goon Hing? A. I am a relative of his; I belong to the same company, the same family; I have not any business connections with him.

Q. What relation, if any, do you bear to the petitioner?

A. Well, I should think three or four generations—say four generations distant.

Q. What is this boy doing here now, if you know?

A. He is going to an English school in Oakland.

Q. Is he doing anything else? A. That is all he is doing.

Q. Where is he living, if you know?

A. He is living at his uncle's.

Q. Whereabouts? A. 610 Fifteenth street, in Oakland.

Q. How do you know he lives there?

A. Well, he is my—he belongs to the same family that I do, and I ought to know.

Q. How often have you seen the boy there?

A. I have seen him there right along, ever since he came off the steamer.

Q. Are you sure he has been living there all the time since he came off the steamer? A. I have seen him there every time I have been there.

Q. Are you sure he is living there or not?

MR. MILLER. We object to the question, as irrelevant, incompetent and immaterial, and calling for the opinion of the witness.

THE COMMISSIONER. Mr. Huff, what did the last witness say to this witness?

INTERPRETER HUFF. I heard him say something, but I could n't exactly understand what he did say.

MR. MILLER. Q. Is your statement that this boy is living on Fifteenth street based entirely on the fact that you have seen him there?

THE COMMISSIONER. Mr. Interpreter, you need not put that question.

MR. MILLER. We except to the ruling.

Q. On what is it you base your opinion that the boy is living at that place? A. Well, I have seen him there; that is what I base it on.

Q. Who would know better where this boy was living, you or his uncle, Gee Goon Hing?

A. He would be more likely to know. He might live at Quong Sing Loong's place on 8th street, but I have seen the boy at the wash

10  
28 house every time I have been there. His uncle has an interest in both of those places.

MR. MILLER. That is all.

MR. MILLER. That is the case.

MR. WITTER. I have no papers to offer in this case.

THE COMMISSIONER. This case was called for examination in its regular order on the 6th day of October. At the request of the petitioner's counsel, the case was continued until this time, upon counsel's statement that the witnesses he desired to produce were connected with a laundry establishment in Oakland, and that it was impossible for them both to attend at one time.

The claim of the petitioner is that he was born in this country. According to the testimony it would appear he left here when less than three years of age, and he, therefore, naturally recollects nothing about  
29 his prior residence here.

The testimony of the two witnesses examined certainly is not calculated to impress one very favorably; and some contradictory statements are made as to the present place of residence of the petitioner. When the second witness was examined with reference to this matter, he made statements contradictory to those of the first witness. The first witness made some remark to the second witness while he was on the stand, but the interpreter, by reason of some confusion occasioned by a person entering the room, did not hear what remark was made to that witness. I think the whole case presents a very unfavorable aspect on all sides. It appears, as a fact, that these two witnesses are not connected with the same establishment, and have no connection with each other, although the counsel for the petitioner the other day stated, in  
30 making a motion for a continuance, that these parties were connected with the same firm,—in business together,—and could not come here at the same time.

MR. MILLER. The Commissioner is entirely mistaken in his views of the statement I made. I at no time made any statement that these people were partners in the same firm.

THE COMMISSIONER. My memorandum is as follows: "Has partners in a laundry; can't both attend at one time," and my recollection is very distinct that that was the statement made by counsel.

I will recommend the petitioner's remand.

MR. MILLER. To which ruling I take an exception.

In the District Court of the United States, Ninth Circuit,  
Northern District of California.

In the Matter of GEE FOOK SING, on *Habeas Corpus*. No. 10,092.

Before S. C. HOUGHTON, Special Referee and Examiner.

Pursuant to the order of the above named Court, duly made and entered herein, pursuant to the order of said Court duly made and entered on the 28th day of January, A. D. 1891, referring the above entitled matter to the undersigned, as Special Referee and Examiner, to hear the testimony, ascertain, determine, and report to the Court the facts, and his conclusions of law thereon, and to recommend such judgment as in his opinion ought to be entered therein, the said matter having been regularly brought on for hearing, and the same having been duly heard and submitted, and due consideration having been thereon had, I, the said Special Referee and Examiner, do find as follows:

That the above named petitioner is a subject of the Empire of China ;

That said petitioner has not, by sufficient evidence, established his right to re-enter and remain in the United States, in accordance with the treaties and laws of the United States.

I do therefore report that, in my opinion, judgment should be entered herein :

That said petitioner was not at the date of the petition herein illegally restrained of his liberty, as therein alleged ;

That said petitioner came to the United States from China by the Steamship *Belgic*, on the 21st day of October, A. D. 1890.

And I do further report that, in my opinion, the said petitioner should be returned by the United States Marshal for the Northern District of California, to the custody whence he was taken, to wit: on board the said steamship, to the custody of the master thereof, for the purpose of deporting him out of the United States, and transporting him to the port whence he came; and that the said Marshal should take the said petitioner into custody, and him safely keep till said order shall be fully executed.

Exceptions were taken to the above report by the Petitioner.

S. C. HOUGHTON,  
Special Referee and Examiner.

- 34 After hearing on exceptions, the above report of the Commissioner is confirmed, and judgment is ordered to be entered in accordance therewith.

October 21st, 1891.

WM. W. MORROW,  
District Judge.

[Endorsed:] Filed, October 9, 1891.

SOUTHARD HOFFMAN, Clerk U. S. District Court,  
Northern District of California.

**In the United States District Court, Northern District of  
California.**

In the Matter of GEE FOOK SING, on *Habeas Corpus*.

- 35 Now comes the above named Gee Fook Sing, and excepts to the recommendation and report of the Commissioner in the above entitled matter, remanding said Gee Fook Sing, and for grounds of exception alleges :

1st. That said report and recommendation are against law ; and

2d. That said report and recommendation are against the evidence.

Dated, October 9th, 1891.

H. B. M. MILLER,  
Attorney for Gee Fook Sing.

[ENDORSED :] Filed, October 9th, 1891.

SOUTHARD HOFFMAN, Clerk.

- 36 At a stated term of the District Court of the United States of America for the Northern District of California, held at the Court Room, in the city of San Francisco, on Wednesday the 21st day of October, in the year of our Lord one thousand eight hundred and ninety-one.

Present—The Honorable WM. W. MORROW, Judge.

*In Re* GEE FOOK SING, on *Habeas Corpus*. No. 10,092.

This matter having been heretofore submitted to the Court for consideration and decision, now after due consideration had thereon, it is by the Court now here ordered that the exceptions to the report of the Referee be, and the same are, hereby disallowed ; that the report of the Referee be, and the same is, hereby confirmed ; and that the said Gee Fook Sing be and he is remanded.

In the District Court of the United States, Northern District of  
California.

In the Matter of GEE FOOK SING, on *Habeas Corpus*. No. 10,992.

This matter having been regularly brought on for hearing before the Court and the Judge thereof, upon the issues joined herein, the United States Attorney having appeared, and intervened on behalf of the United States, and the same having been duly heard and submitted, and due consideration thereon had, it is by the Court and the Judge thereof now here ordered and adjudged:

That the above named person, in whose behalf the Writ of Habeas Corpus herein was sued out, was not at the date of the petition herein illegally restrained of his liberty, as therein alleged.

It is further adjudged and found, that he came from China by the Steamship "Belgie," and is a Chinese person forbidden by law to land within the United States, and has no right to be or remain therein:

It is therefore ordered that the said above named person be remanded by the United States Marshal for the Northern District of California, to the custody whence he was taken, to wit: on board the said Steamship, to the custody of the master of said Steamship, or in case of a change of master, to the custody of the master thereof, whoever he may be at the time of this order of remand, or to place the said above named person in the hands and charge of any party on board said steamship, for the time being representing the master, or then in charge of said steamship in the absence of the master, or for the time being exercising control or authority thereon; this order to be executed as to said steamship, whether still in port, not having departed therefrom, or having departed and returned since the proceedings herein were instituted. And in case said steamship has departed and not returned, or for any other reason, the said above named person cannot be placed on said steamship, that the said Marshal place him upon any other vessel available for the purpose, paying the necessary passage money, for the purpose of deporting him out of the United States, and transporting him to the port of Hong Kong, whence he came. And for the purpose of carrying this order into effect, it is further ordered that the said Marshal take the said above named person into custody, and him safely keep till said order shall be fully executed.

Entered this 21st day of October. 1891.

WM. W. MORROW, Judge.

[ENDORSED:] Filed, October 21st, 1891.

SOUTHARD HOFFMAN, Clerk.

By J. S. MANLEY, Deputy Clerk.

**U. S. District Court, Northern District of California.**

In the Matter of GEE FOOK SING, on *Habeas Corpus*.

On application of H. B. M. Miller, Esq., Attorney for the above named Gee Fook Sing.

It is hereby ordered that said Gee Fook Sing be allowed to, and he hereby is allowed to, appeal from the judgment of remand herein made and given on the 21st day of October, 1891, to the United States Circuit Court of Appeals for the Ninth Circuit.

41 Dated, this 26th day of October, 1891.

WM. W. MORROW, Judge.

[ENDORSED:] Filed, Oct. 26th, 1891.

SOUTHARD HOFFMAN, Clerk.

UNITED STATES OF AMERICA—SS.

*The President of the United States, to the United States of America, and to the United States Attorney for the Northern District of California, Greeting:*

42 You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 24th day of November next, pursuant to an order allowing appeal entered in the Clerk's Office of the District Court of the United States, for the Northern District of California, in that certain matter entitled *In Re Gee Fook Sing, on Habeas Corpus, No. 10,092*, and wherein the said United States of America are Intervenors and Appellees, and the said Gee Fook Sing is Appellant, to show cause, if any there be, why the judgment rendered against the said Gee Fook Sing, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Wm. W. Morrow, of the United States District Court for the Northern District of California, this 26th day of October, A. D. 1891.

WM. W. MORROW, Judge.

Service upon me of a copy of within citation is hereby accepted this 3rd day of November, 1891.

W. G. WITTER,

Ass't U. S. District Atty.

[ENDORSED:] Filed, November 3d, 1891.

SOUTHARD HOFFMAN, Clerk.

By J. S. MANLEY, Deputy Clerk.

**In the United States District Court, Northern District of  
California.**

In the Matter of GEE FOOK SING, on *Habeas Corpus*.

*Assignment of Errors.*

Now comes the said Gee Fook Sing, and by his Attorney, H. B. M. Miller, Esq., specifies and assigns the following particular in which the evidence introduced at the hearing of said matter was and is insufficient to justify the judgment of remand herein made :

1st. The evidence shows that the said Gee Fook Sing was not and is not a subject of the Emperor of China, but was and is a citizen of the United States, and was born in the City and County of San Francisco, State of California, in the year 1877.

And the said Gee Fook Sing hereby specifies and assigns the following errors in law occurring at the hearing of said Matter before the Honorable Commissioner of said United States District Court, and before the said United States District Court.

1st. Said Commissioner erred in overruling the objection of said Gee Fook Sing to the following question asked by said Commissioner : "Tell me how it is his father has no interest in the store, and you have but a \$600 interest, and the store is not paying more than expenses and wages, that this boy is kept there without any charge for boarding and lodging?" To which ruling the said Gee Fook Sing duly excepted.

2d. Said Commissioner erred in overruling said Gee Fook Sing's objection to the following question asked by said Commissioner : "How is it it costs him nothing?" To which ruling said Gee Fook Sing duly excepted.

3rd. Said Commissioner erred in overruling the said Gee Fook Sing's objection to the following question asked by said Commissioner : "Are you sure he is living there or not?" To which ruling said Gee Fook Sing duly excepted.

46 4th. Said Commissioner erred in refusing to allow the following question put by the attorney for said Gee Fook Sing: "Is your statement that this boy is living on 15th street based entirely on the fact that you have seen him there?" To which ruling said Gee Fook Sing duly excepted.

5th. That said Commissioner erred in recommending a remand of said Gee Fook Sing. To which said Gee Fook Sing duly excepted.

6th. That the Judge of said United States District Court erred in confirming the recommendation of said Commissioner, and in ordering a judgment of remand to be entered herein.

7th. That said judgment of remand is not sustained by the evidence, but is against the same.

8th. That said judgment of remand is against law.

H. B. M. MILLER.

47 [ENDORSED:] Received a copy of within assignment of errors this 3rd day of November, 1891.

W. G. WITTER,  
Ass't. U. S. Atty.

Filed, November 3d, 1891.

SOUTHARD HOFFMAN, Clerk.

**United States Circuit Court of Appeals, for the 9th Circuit.**

In the Matter of GEE FOOK SING, on *Habeas Corpus*.

It is hereby stipulated that the foregoing Transcript contains a full, true and correct copy of Petition for Writ, Testimony of Witnesses, 48 Exceptions to Commissioner's Recommendation and Report, Commissioner's Recommendation and Report, Order disallowing Exceptions, and of Remand, Order of Remand, Order allowing Appeal, Citation, and Assignment of Errors. That said papers constitute the only part of the record in said matter that need be printed; and that said appeal may be heard thereon.

Dated, November 9th, 1891.

H. B. M. MILLER,  
Atty. for Gee Fook Sing.  
W. G. WITTER,  
Asst. U. S. Dist. Atty.



ings that he is a subject of the Emperor of China, and that he has not by sufficient evidence established his right to enter or remain in the United States. The case was heard by the District Court upon the evidence so taken and the report of the Commissioner with the result that the findings of the Commissioner were affirmed and a judgment given remanding the appellant.

The case has been submitted in this Court, upon the record without argument. We have considered all the questions of law and fact which we find involved, and our conclusions are: That, inasmuch as the Fourteenth Article of the Amendments to the Constitution of the United States declares that all persons born in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside, the laws excluding emigrants who are Chinese laborers are inapplicable to a person born in this country and subject to the jurisdiction of its government, even though his parents were not citizens nor entitled to become citizens under the laws providing for the naturalization of aliens; that any person alleging himself to be a citizen of the United States, and desiring to return to his country from a foreign land and that he is prevented from doing so, without due process of law, and who on that ground applies to any United States Court for a writ of Habeas Corpus, is entitled to have a hearing, and a judicial determination of the facts so alleged; and that no Act of Congress can be understood or construed as a bar to such hearing and judicial determination.

The evidence in the case shows that it is an admitted fact, that, the appellant is of Chinese parentage. His appearance and language proves that he is in all respects save possibly in the one matter of his legal citizenship a Chinaman and not an American. He testifies that he was born in San Francisco, in 1877; that he was taken to China by his parents when he was under three years of age, and that he remained there continuously until October, 1890. Under the circumstances stated by him but little if any credence should be given to his own evidence as to the place of his birth, and he is corroborated on this vital point only by the testimony of other Chinese persons who confessedly have seen him but a few times and can give only hearsay evidence. There certainly is not disclosed in this record anything to justify this Court in reversing the judgment of the District Court, on the ground of error in its findings of fact.

The judgment appealed from is affirmed and the cause remanded for such further proceedings as may be necessary.

*United States Circuit Court of Appeals for the Ninth Circuit.*

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LEM HING DUN *vs.*  
THE UNITED STATES,  
LEE FOO *vs.*  
THE UNITED STATES,  
LUM SUEY CHEONG *vs.*  
THE UNITED STATES,  
TOY QUONG TEUNG *vs.*  
THE UNITED STATES.

Nos. 4, 10, 11, 23.  
Filed January 25, 1892.

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*Appeals from the U. S. District Court, Northern District of California.*

BEFORE DEADY, HANFORD AND HAWLEY, J. J.

HANFORD, J.—The opinion of this Court in the case of Gee Fook Sing *vs.* The United States, just filed, disposes of all the questions of law in these cases. The evidence is not sufficient in either to make a case in favor of the appellant so clear as to warrant this Court in reversing the judgment of the District Court upon the facts. The evidence as a whole does not make as good a case for the appellant as it might be reasonably expected a man would make out in his native city, after time for ample preparation; and the case is such as any impostor could easily make.

We hold that when upon a candid consideration of all the evidence in a case, there appears to be room for a difference of opinion as to the material facts in issue, this Court ought not to reverse the judgment on a question of fact alone.

Judgment affirmed and cause remanded.

